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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Best Western International Inc.,	)	CV 11-1281-PHX-FJM
	)	
Plaintiff,	)	<b>ORDER</b>
	)	
vs.	)	
	)	
I-70 Hotel Corp.; MAS Hotel Group)	)	
Corp.; Shamir Bhakta; Kansas Hotel)	)	
Corp.; Naresh Bhakta; Mrudulaben)	)	
Bhakta,	)	
	)	
Defendants.	)	
	)	

The court has before it defendants Kansas Hotel Corporation ("KHC"), Naresh Bhakta, and Mrudulaben Bhakta's ("the Kansas defendants") motion to dismiss for lack of personal jurisdiction (doc. 88), plaintiff's response (doc. 96) and separate statement of facts (doc. 97), and the Kansas defendants' reply (doc. 99) and response to statement of facts (doc. 100).<sup>1</sup>

**I**

This action centers around two hotels in Kansas and their allegedly unauthorized use of Best Western symbols. Plaintiff is an Arizona corporation with its principal place of

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<sup>1</sup> The Kansas defendants ask us to strike multiple portions of plaintiff's response pursuant to Rule 12(f), Fed. R. Civ. P. That rule permits us to strike scandalous, impertinent, redundant, or immaterial material "from a pleading." A response to a motion is not a pleading. Defendants' requests to strike are denied.

1 business in Arizona. Plaintiff authorizes its member hotels to use Best Western symbols.  
2 A hotel must apply to become a Best Western member.

3 Naresh ("Nick") Bhakta created I-70 Hotel Corporation ("I-70") in January 2011. I-70  
4 is owned in part by Nick and his wife, Mrudubalen ("Mary") Bhakta. That same month, I-70  
5 purchased the Mid-America Inn. Plaintiff alleges that once the Mid-America Inn was  
6 purchased, its Best Western membership automatically terminated. I-70 submitted a new  
7 membership application to plaintiff in February 2011. The application was denied.  
8 According to plaintiff, it notified I-70 that it must stop using Best Western symbols, but a  
9 visit to the Mid-America Inn in June 2011 revealed that Best Western signs and items  
10 displaying the Best Western logo remained on the property.

11 In June 2010, Nick incorporated MAS Hotel Group ("MAS"). Both Nick and Mary  
12 were identified as shareholders. MAS purchased the Heart of America Inn in March 2011.  
13 MAS did not submit a membership application to plaintiff. Plaintiff notified MAS in April  
14 2011 that it was required to remove all Best Western symbols from the hotel. Plaintiff  
15 alleges that in July 2011, MAS, through Mary and Nick, misrepresented in membership  
16 applications to the Days Inn and the Knights Inn that the Heart of America Inn was affiliated  
17 with Best Western.

18 Plaintiff filed this action on June 28, 2011 (doc. 1). The original complaint named I-  
19 70, MAS, and Shamir Bhakta (Nick and Mary's son) as defendants. An amended complaint  
20 was filed November 30, 2011 (doc. 39). On October 3, 2011, Nick formed KHC and was  
21 appointed its registered agent. Mary is one of KHC's directors. Four days later, I-70 and  
22 MAS conveyed the Mid-America Inn and the Heart of America Inn to KHC. Nick signed  
23 the documents on behalf of I-70 and MAS, and Mary signed the documents on behalf of  
24 KHC.

25 Magistrate Judge Anderson granted plaintiff's motions to amend the scheduling order  
26 and file a second amended complaint ("SAC") on April 9, 2012 (doc. 72). Plaintiff filed the  
27 SAC on April 10, 2012 (doc. 73). The action was then reassigned to this court. The SAC  
28 alleges that new defendants KHC, Nick, and Mary violated the Uniform Fraudulent Transfer

Act ("UFTA") by transferring both hotels to KHC with the intent to defraud plaintiff and hinder enforcement of any judgment that it receives in this action. SAC ¶¶ 186-226. In addition, the SAC alleges that Nick and Mary committed federal and state trademark infringement by representing to the Days Inn and the Knights Inn that the Heart of America Inn was a Best Western member. SAC ¶¶ 62, 125. The Kansas defendants move to dismiss pursuant to Rule 12(b)(2), Fed. R. Civ. P. for lack of personal jurisdiction.

## II

The plaintiff bears the burden of showing that personal jurisdiction is appropriate. Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004). When a motion to dismiss for lack of personal jurisdiction is decided without an evidentiary hearing, the plaintiff must present a prima facie showing of personal jurisdiction. Id. A plaintiff cannot rest on bare allegations in the complaint. However, we accept uncontroverted allegations as true and resolve factual conflicts by accepting plaintiff's version of events. Id.

When no federal statute governs personal jurisdiction, we apply the law of the state where this court sits. Id.; see also Fed. R. Civ. P. 4(k)(1)(A). In Arizona, personal jurisdiction is permitted to the extent allowed by the United States Constitution. See Ariz. R. Civ. P. 4.2(a). Plaintiff argues that we have specific jurisdiction over the Kansas defendants. Accordingly, plaintiff must show that the Kansas defendants have minimum contacts with Arizona such that exercising jurisdiction over them will not "offend traditional notions of fair play and substantial justice." Schwarzenegger, 374 F.3d at 801 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945)). To do so, plaintiff must show (1) that defendants "purposefully direct[ed] [] activities or consummate[d] some transaction with the forum or resident thereof; or perform[ed] some act by which [t]he[y] purposefully avail[ed] [themselves] of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;" and (2) that the claim arises from or relates to the defendants' "forum-related activities." Id. at 802. If the plaintiff is successful, then the burden shifts to the Kansas defendants, who must "present a compelling case that the exercise of jurisdiction would not be reasonable." Id. (internal quotation marks

1 and citation omitted).

2 We apply purposeful direction analysis to cases sounding in intentional tort, such as  
 3 trademark infringement. See Mavrix Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1228  
 4 (9th Cir. 2011) (applying purposeful direction analysis to a copyright infringement claim, "a  
 5 tort-like cause of action"); Revolution Distrib. v. Evol Nutrition Assocs., Inc., CV-11-2120-  
 6 PHX-JAT, 2012 WL 2368634, at \*4 (D.Ariz. June 21, 2012) (applying purposeful direction  
 7 analysis to a trademark infringement claim). It is not certain that the Ninth Circuit would  
 8 apply purposeful direction analysis to a fraudulent transfer claim. See Grassmuck v.  
 9 Bishop, CV-09-1257-HU, 2010 WL 1742091, at \*4 (D.Or. Apr. 5, 2010) (citing United  
 10 States v. Neidorf, 522 F.2d 916, 918 (9th Cir. 1975) ("the liability of the transferee of a  
 11 fraudulent conveyance. . . [is] based not upon tort but upon quasi-contract.")) (discussing  
 12 difference between Fifth and Sixth Circuits as to whether the purposeful direction analysis  
 13 should be applied to a fraudulent transfer claim). Here, both parties have applied purposeful  
 14 direction analysis to the fraudulent transfer claim. This seems appropriate, as allegations of  
 15 fraudulent transfer are effectively allegations of an intentional tort. See Kremen v. Cohen,  
 16 5:11-cv-05411-LHK, 2012 WL 44999, at \*7 (N.D.Cal Jan. 7, 2012) (characterizing UFTA  
 17 violation as intentional tort and applying purposeful direction analysis).

18 We analyze purposeful direction under a three-part test originating from Calder v.  
 19 Jones, 465 U.S. 783, 104 S. Ct. 1482 (1984). Under the Calder effects test, plaintiff must  
 20 allege that the Kansas defendants "(1) committed an intentional act, (2) expressly aimed at  
 21 the forum state, (3) causing harm that the defendant knows is likely to be suffered in the  
 22 forum state." Schwarzenegger, 374 F.3d at 803 (citing Dole Food Co., Inc. v. Watts, 303  
 23 F.3d 1104, 1111 (9th Cir. 2002)). An intentional act is one done with the "intent to perform  
 24 an actual, physical act in the real world." Id. at 806. Here, plaintiff alleges that Nick and  
 25 Mary Bhakta submitted applications with the Days Inn and the Knights Inn that referred to  
 26 the Heart of America Inn as a Best Western property. The submission of an application is  
 27 an intentional act. Plaintiff also alleges that Nick (signing on behalf of I-70) and Mary  
 28 (signing on behalf of KHC) fraudulently sold the Heart of America and Mid-America Inns

1 to KHC. The alleged fraudulent transfer of the hotels is also an intentional act. See Amoco  
2 Chem. Co. v. Tex Tin Corp., 925 F. Supp. 1192, 1200 (S.D.Tex. 1996) (alleged out-of-state  
3 asset transfer to avoid company obligations was an intentional act under Calder).

4 Next, plaintiff must show that the Kansas defendants expressly aimed their conduct  
5 at Arizona. This prong is satisfied when "the defendant is alleged to have engaged in  
6 wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the  
7 forum state." Dole Food, 303 F.3d at 1111 (internal quotation marks and citation omitted).  
8 Plaintiff has alleged sufficient facts to suggest that KHC, Nick, and Mary expressly aimed  
9 their allegedly fraudulent transfer of the hotels at the plaintiff in Arizona. Specifically,  
10 plaintiff alleges that the Kansas defendants transferred the hotels to KHC just four days after  
11 its incorporation in order to prevent plaintiff from obtaining a meaningful judgment in the  
12 action before this court.<sup>2</sup>

13 The same cannot be said about the allegations of trademark infringement against Nick  
14 and Mary. Plaintiff alleges that Nick and Mary misrepresented in new membership  
15 applications that the Heart of America Inn was affiliated with Best Western. Although  
16 plaintiff alleges that Nick and Mary were aware that plaintiff was an Arizona resident, this  
17 alone is insufficient. See Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124,  
18 1129 (9th Cir 2010) (that harm from copyright infringement is foreseeable within the forum  
19 is not enough; conduct must be "expressly aimed at the forum"). Plaintiff has not shown that  
20 Nick or Mary individually targeted plaintiff in Arizona by submitting the applications. See  
21 Bancroft & Masters, Inc. v. Augusta Nat'l Inc., 223 F.3d 1082, 1088 (9th Cir. 2000)  
22 (discussing importance of "individualized targeting" in satisfying Calder effects test).  
23 Plaintiff does not allege that any Arizonans saw the applications, or that plaintiff saw the  
24 applications. Plaintiff does not allege that the Bhaktas' actions in using plaintiff's name on  
25 the applications was an act of infringement that placed them "in direct competition" with  
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27 <sup>2</sup> While Nick and Mary attempt to controvert these allegations by affidavit, we must  
28 accept plaintiff's version of events as true. See Schwarzenegger, 374 F.3d at 800.

1 plaintiff in Arizona. See Brayton Purcell, 606 F.3d at 1130-31 (copying California plaintiff  
2 law firm's website placed defendant law firm in direct competition for California clients, and  
3 constituted express aiming of copyright infringement at California). And plaintiff does not  
4 allege that the other hotel chains were headquartered in Arizona. We conclude that the  
5 plaintiff has not presented a prima facie showing that the Bhaktas' use of the Best Western  
6 name on franchise applications was conduct expressly aimed at Arizona.

7 Under the final prong of the Calder effects test, plaintiff must show that the Kansas  
8 defendants' actions caused harm that they knew was likely to be suffered in the forum state.  
9 A corporation can suffer economic harm both where its principal place of business is located  
10 and where the acts occurred. Mavrix Photo, 647 F.3d at 1231. Harm sufficient to establish  
11 personal jurisdiction may be felt in multiple forums. Id. Contrary to the Kansas defendants'  
12 argument, "the 'brunt' of the harm need not be suffered in the forum state." Yahoo! Inc. v.  
13 La Ligue Contre Le Racisme Et L'Antisemitisme, 433 F.3d 1199, 1207 (9th Cir. 2006).  
14 Here, plaintiff alleges that the harm from being unable to collect any judgment it might  
15 receive as the result of the Kansas defendants' fraudulent transfer would be felt here in  
16 Arizona, both the location of this action and plaintiff's principal place of business. We  
17 conclude that plaintiff has shown sufficient jurisdictional harm in Arizona for the fraudulent  
18 transfer claim.

19 Finally, we address whether plaintiff has shown that the fraudulent transfer claim  
20 arises from the Kansas defendants' forum-related activities. See Schwarzenegger, 374 F.3d  
21 at 802. Despite plaintiff's failure to expressly argue this point in their response, we conclude  
22 that it has sufficiently alleged that the fraudulent transfer claim arises from the Kansas  
23 defendants' allegedly fraudulent transfer of the hotels to KHC. Indeed, the fraudulent  
24 transfer claim would not exist "but for" the sale of the hotels, which as discussed above was  
25 expressly aimed at Arizona.

### 26 III

27 Alternatively, plaintiff argues that personal jurisdiction can be obtained over Nick and  
28 Mary Bhakta because I-70 and MAS are their alter egos. An officer, director, or shareholder

1 of a corporation may be liable for the corporation's torts if plaintiff shows that (1) the  
2 individual participated in or authorized the actions or (2) the corporation is the alter ego of  
3 the individual. Maloof v. Raper Sales, Inc., 113 Ariz. 485, 488, 557 P.2d 522, 525 (1976).  
4 If I-70 and MAS are mere alter egos, plaintiff argues we can impute both corporations'  
5 conduct (and thus, our personal jurisdiction over these defendants) to Nick and Mary Bhakta.  
6 To disregard the separateness of the corporate form and find that I-70 and MAS are alter  
7 egos, plaintiff must show "(1) unity of control and (2) that observance of the corporate form  
8 would sanction a fraud or promote injustice." Gatecliff v. Great Republic Life Ins. Co., 170  
9 Ariz. 34, 37, 821 P.2d 725, 728 (1991).

10 Plaintiff argues that it has established unity of control because it alleged in its  
11 complaint that I-70 and MAS are alter egos, because Nick is the registered agent for MAS  
12 and I-70, and because both Nick and Mary have an ownership interest in MAS and I-70.  
13 Stating a corporation is an alter ego, however, is a legal conclusion rather than a factual  
14 allegation. The fact that both Nick and Mary were a part of I-70 and MAS is not dispositive.  
15 See United States v. Bestfoods, 524 U.S. 51, 61-62, 118 S. Ct. 1876, 1884 (1998)  
16 (duplication of corporate officers does not necessarily mean that the corporate veil between  
17 a parent and its subsidiary will be pierced). Plaintiff has not presented any additional  
18 evidence to support its allegations of unity of control. For example, plaintiff has not shown  
19 that either Nick or Mary commingled personal and corporate funds or diverted company  
20 property for personal use. See Activator Methods Int'l, Ltd. v. Future Health, Inc., CV-11-  
21 1379-PHX-GMS, 2012 WL 715629, at \*3 (D.Ariz. Mar. 6, 2012) (collecting cases stating  
22 that corporation was not an alter ego of an owner absent evidence of commingling of funds  
23 or abuse of corporate structure for improper purposes). Moreover, failing to recognize I-70  
24 and MAS as alter egos of Nick and Mary would not accomplish fraud or promote injustice.  
25 Plaintiff has asserted trademark infringement claims against I-70 and MAS, and both have  
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1 already appeared as defendants in this action.<sup>3</sup>

2 This does not necessarily mean, however, that we cannot exercise personal jurisdiction  
3 over Nick and Mary Bhakta on the trademark infringement claims. Although personal  
4 jurisdiction must be present for "each claim asserted against a defendant," the Ninth Circuit  
5 has explicitly adopted the doctrine of pendent personal jurisdiction. Action Embroidery  
6 Corp. v. Atl. Embroidery, Inc., 368 F.3d 1174, 1180-81 (9th Cir. 2004). The doctrine permits  
7 a court to "assert pendent personal jurisdiction over a defendant with respect to a claim. . .  
8 so long as it arises out of a common nucleus of operative facts with a claim in the same suit  
9 over which the court does have personal jurisdiction." Id. at 1180. The facts "need not  
10 exactly track the facts underlying the claims for which there is personal jurisdiction, so long  
11 as the core facts are the same." Fiore v. Walden, 657 F.3d 838, 858 (9th Cir. 2011). Here,  
12 the core facts underlying plaintiff's fraudulent transfer claim (the transfer of the hotels to  
13 KHC in October 2011) differ from the core facts underlying Nick and Mary's alleged  
14 trademark infringement (submission of franchise applications using Best Western's name in  
15 July 2011). As a result, pendent personal jurisdiction is not available for the trademark  
16 infringement claims.

#### 17 IV

18 Because plaintiff has presented a prima facie case for personal jurisdiction over the  
19 Kansas defendants on the fraudulent transfer claim, the burden shifts to the Kansas  
20 defendants to show that exercise of jurisdiction would be unreasonable. Schwarzenegger,  
21 374 F.3d at 802. We consider seven factors in assessing reasonableness:

22 (1) the extent of the defendants' purposeful injection into the forum state's  
23 affairs; (2) the burden on the defendant of defending in the forum; (3) the  
24 extent of the conflict with the sovereignty of the defendant's state; (4) the  
25 forum state's interest in adjudicating the dispute; (5) the most efficient judicial  
26 resolution of the controversy; (6) the importance of the forum to the plaintiff's  
27 interest in convenient and effective relief; and (7) the existence of an  
28 alternative forum.

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27 <sup>3</sup> This includes an allegation that MAS used the Best Western name on the  
28 applications submitted to the Days Inn and the Knights Inn. SAC ¶ 62.



1 CollegeSource, Inc. v. AcademyOne, Inc., 653 F.3d 1066, 1079 (9th Cir. 2011) (quoting  
2 Dole Food, 303 F.3d at 1114)).

3 First, as discussed above, the Kansas defendants purposefully directed their actions  
4 in allegedly fraudulently transferring the hotels to plaintiff, which would cause harm in  
5 Arizona. This constitutes purposeful injection. Id. at 1080. Acts allegedly designed to  
6 thwart plaintiff's successful recovery in this action are a substantial injection into the judicial  
7 affairs of this forum. Next, we consider the burden on the Kansas defendants of litigating  
8 in Arizona. Given advances in communication and travel, the burden of out-of-state  
9 litigation "is substantially less than in days past." Id. (citation omitted). Indeed, the Kansas  
10 defendants have retained the same lawyers as the original defendants, including Arizona  
11 counsel. Accordingly, this factor does not tip heavily in the Kansas defendants' favor. The  
12 conflict with the sovereignty of Kansas is at most minimal. Both states have enacted the  
13 UFTA, which forms the basis of plaintiff's fraudulent transfer claim. See A.R.S. § 44-1001;  
14 Kan. Stat. Ann. § 33-201. By contrast, this court has an interest in litigating this claim,  
15 which alleges that assets were transferred precisely to avoid any judgment entered for  
16 plaintiff in this court. Similarly, this action has been pending in this district for a year.  
17 Permitting the fraudulent transfer claim to proceed here will promote efficiency by obviating  
18 the need for a new court action in another state, which is in the interest of the plaintiff in  
19 obtaining convenient relief. Finally, whether an alternative forum exists only becomes  
20 relevant if litigation in the forum state is unreasonable. CollegeSource, 653 F.3d at 1080.  
21 Because we conclude that defendants have not shown that litigation in Arizona would be  
22 unreasonable, we do not address this final factor.

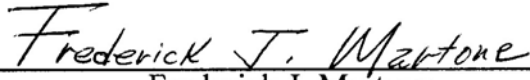
## 23 V

24 In conclusion, plaintiff has met its burden of showing a prima facie case for personal  
25 jurisdiction over the Kansas defendants on the fraudulent transfer claim. Plaintiff has not,  
26 however, met its burden of showing that personal jurisdiction over Nick and Mary Bhakta  
27 on the trademark infringement claims is appropriate, and pendent personal jurisdiction is  
28 unavailable.

1 Plaintiff asks for jurisdictional discovery to depose the Bhaktas to "determine the full  
2 extent of trademark infringement that occurred as a result of their conduct." Response at 16.  
3 Courts should deny requests for jurisdictional discovery when a party fails to show that  
4 additional discovery would uncover necessary facts to prove that a court has personal  
5 jurisdiction. MMI, Inc. v. Baja, Inc., 743 F. Supp. 2d 1101, 1113 (D.Ariz. 2010) (citing  
6 Autogenomics, Inc. v. Oxford Gene Tech., Ltd., 566 F.3d 1012, 1023 (Fed. Cir. 2009)).  
7 Here, plaintiff has not made any showing how learning more about "the full extent" of  
8 infringement resulting from Nick and Mary's submission of the franchise applications will  
9 prove that these acts were expressly aimed at Arizona. And plaintiff's discovery of who is  
10 currently employed at the hotels and the "true nature" of the asset transfers to KHC will not  
11 uncover necessary facts to find that I-70 and MAS are alter egos of Nick and Mary.  
12 Accordingly, we deny plaintiff's request for jurisdictional discovery.

13 **IT IS ORDERED GRANTING IN PART** Kansas Hotel Corporation, Naresh  
14 Bhakta, and Mrudulaben Bhakta's motion to dismiss for lack of personal jurisdiction (doc.  
15 88). The fraudulent transfer claim against Naresh Bhakta, Mrudulaben Bhakta, and Kansas  
16 Hotel Corporation remains. The trademark infringement claims against Naresh Bhakta and  
17 Mrudulaben Bhakta are **DISMISSED** without prejudice for lack of personal jurisdiction.

18 DATED this 19<sup>th</sup> day of July, 2012.

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 Frederick J. Martone  
22 United States District Judge  
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